CCRB INVESTIGATIVE RECOMMENDATION

| Investigator: | | Team: | CCRB Case #: | IZI F | Force | П | Discourt. | |
|-------------------------------|------------------------|--|-----------------------|-------|------------|--------|-------------|------------|
| Santosh Prakash | | Squad #8 | 201604051 | | Abuse | | O.L. | ☐ Injury |
| Samosh Frakash | | Squad #6 | 201004031 | ▎█▘▗ | Abuse | Ш | O.L. | |
| Incident Date(s) | | Location of Incident: | | Pr | ecinct: | 18 | Mo. SOL | EO SOL |
| Wednesday, 05/11/2016 9:35 PM | | Outside 2021 Bergen S 73rd Precinct stationho | | | 73 | 11 | /11/2017 | 11/11/2017 |
| Date/Time CV Reported | | CV Reported At: | How CV Reported: | Ι | Date/Time | Rece | ived at CCI | RB |
| Thu, 05/12/2016 1:14 AM | | CCRB | On-line website | 1 | Γhu, 05/12 | 2/2016 | 5 1:14 AM | |
| Complainant/Victim | Type | Home Addre | ss | | | | | |
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| Subject Officer(s) | Shield | TaxID | Command | | | | | |
| 1. SGT Oscar Nunez | 03505 | 935412 | 073 PCT | | | | | |
| 2. POM Gamalier Baez | 20302 | 932287 | 073 PCT | | | | | |
| 3. POM George Allen | 06387 | 944517 | 073 PCT | | | | | |
| 4. POM Marlon Sanchez | 23417 | 951199 | 073 PCT | | | | | |
| 5. POM Gesly Jean | 21936 | 954003 | 073 PCT | | | | | |
| 6. An officer | | | | | | | | |
| Witness Officer(s) | Shield N | o Tax No | Cmd Name | | | | | |
| 1. SGT Danielle Donoghue | 01333 | 941674 | 073 PCT | | | | | |
| 2. POM Suresh Rupram | 31874 | 933305 | 073 PCT | | | | | |
| 3. POF Dornezia Agard | 06578 | 953619 | 073 PCT | | | | | |
| Officer(s) | Allegation | on | | | Inve | stiga | tor Recon | nmendation |
| A.SGT Oscar Nunez | Abuse: C | Outside 2021 Bergen Stre | eet, Sergeant Oscar l | Nune | Z | | | |
| B.SGT Oscar Nunez | Abuse: C | Outside 2021 Bergen Stre | eet, Sergeant Oscar I | Nune | Z | | | |
| C.SGT Oscar Nunez | Abuse: C | Outside 2021 Bergen Stre | eet, Sergeant Oscar l | Nune | Z | | | |
| D.SGT Oscar Nunez | | Outside 2021 Bergen Stre ndividuals. | eet, Sergeant Oscar l | Nune | Z | | | |
| E.SGT Oscar Nunez | Abuse: C § 87(2)(b) | Outside 2021 Bergen Stre | eet, Oscar Nunez fris | sked | | | | |
| F.SGT Oscar Nunez | Abuse: C | Outside 2021 Bergen Stress 87(2)(b) | eet, Sergeant Oscar l | Nune | Z | | | |
| G.SGT Oscar Nunez | | Dutside 2021 Bergen Stre n individual. | eet, Sergeant Oscar I | Nune | z | | | |

| Officer(s) | Allegation | Investigator Recommendation |
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| H.POM Gamalier Baez | Abuse: Outside 2021 Bergen Street, Police Officer Gamalier Baez frisked § 87(2)(b) | |
| I.POM Gamalier Baez | Abuse: Outside 2021 Bergen Street, Police Officer Gamalier Baez frisked an individual. | |
| J.POM George Allen | Abuse: Outside 2021 Bergen Street, Police Officer George Allen frisked an individual. | |
| K.POM Marlon Sanchez | Abuse: Outside 2021 Bergen Street, Police Officer Marlon Sanchez frisked an individual. | |
| L.POM Gesly Jean | Abuse: Outside 2021 Bergen Street, Police Officer Gesly Jean frisked an individual. | |
| M. An officer | Abuse: Outside 2021 Bergen Street, an officer searched a vehicle. | |
| N.SGT Oscar Nunez | Force: At the 73rd Precinct Stationhouse, Sergeant Oscar Nunez used physical force against § 87(2)(b) | |

Case Summary

| On the night of May 11, 2016, \$\frac{897(2)(5)}{2}\$ filed the following complaint at the 73 rd Precinct stationhouse (generating IAB original log 2016-17157), regarding an earlier incident at Bergen Street and Boyland Street in Brooklyn. \$\frac{897(2)(5)}{2}\$ alleged that at approximately 9:30 pm that night, he and his friends were stopped, frisked, and searched by officers, one of whom allegedly stole cash from his pocket. (B.R. 01 – IAB Complaint) On May 12, 2016, \$\frac{897(2)(5)}{2}\$ reported the same incident online through the CCRB's website, but with an update: while at the stationhouse the previous night, the officer who stole his money – identified as Sgt. Oscar Nunez (73 rd Precinct) – allegedly pushed \$\frac{897(2)(5)}{2}\$ when asked about it. (B.R. 02 – CCRB Complaint) \$\frac{897(2)(5)}{2}\$ went back to the 73 rd Precinct stationhouse on May 12, at which point a second CCRB Complaint Report (police-prepared) was forwarded to the agency. (B.R. 03 – PD-prepared CCRB complaint) \$\frac{897(2)(5)}{2}\$ provided names and contact information for two other victims of the street stop – \$\frac{897(2)(5)}{2}\$ and \$\frac{897(2)(5)}{2}\$ |
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| was ultimately uncooperative with the investigation and never provided a sworn statement. Neither did \$87(2)(b) However, on June 15, 2016, \$87(2)(b) appeared and gave testimony on the incident, alleging: that he, \$87(2)(b) and frisked by officers (Allegations E, G, H, I, J, K, and L); that when Sgt. Nunez frisked \$87(2)(b) he was told to remove cash from a pocket (Allegation F); that an officer searched a parked vehicle at the scene (Allegation M); and that later at the stationhouse, while filing his complaint, \$87(2)(b) was pushed by Sgt. Nunez. (Allegation N). (B.R. 08 – \$87(2)(b) Sworn Statement) \$87(2)(b) s stolen property allegation was referred to IAB (CCRB spin-off #\$87(2)(b)), where it is an active case. \$87(2)(b) provided a brief video recording of the stationhouse interaction, but the alleged force is not documented. (B.R. 29 – Stationhouse Video) |
| Due to \$87(2)(b) s delayed participation, the prolonged efforts to interview \$87(2)(b) and various officer scheduling difficulties, this case surpassed the agency's 90-day benchmark. |
| Mediation, Civil and Criminal Histories |
| This case was mediation ineligible because of the stolen property allegation. Notice of claim results are pending. § 87(2)(6). § 87(2)(6) |
| Civilian and Officer CCRB Histories |
| \$87(2)(b) and \$87(2)(b) have not filed any prior CCRB complaints. \$87(2)(b) was a victim in \$87(2)(b) Sgt. Oscar Nunez has been a member of service for 12 years: he was subject in one prior case, in one exonerated allegation. \$87(2)(g) PO George Allen has been a member of service for 9 years: he was a subject in 5 prior cases, in 10 allegations, one of which was substantiated but dismissed in court (201209362: Abuse –Question) \$87(2)(g) |

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- PO Gamalier Baez has been a member of service for 13 years: he was a subject in 5 prior cases, in 16 allegations, one of which was substantiated (201510149: Abuse Vehicle Search, Command Discipline A). § 87(2)(9)
- PO Marlon Sanchez has been a member of service for 5 years: he was a subject in one prior case, in one allegation, which was substantiated (201510149: Abuse Refusal to provide name/shield, Command Discipline A). § 87(2)(9)
- PO Gesly Jean has been a member of service for 3 years: \$87(4-b), \$87(2)(9)

Potential Issues

who only communicated with the investigation sporadically, missed three interview appointments at the CCRB between May and June 2016, as well as a July field interview at his Brooklyn home. (B.R. 04, 05 – 887(2)(6) Phone Statements; B.R. 10 – Field Work Memo) After 887(2)(6) provided a brief phone statement (in which he stated that he was only stopped, not frisked) he missed his interview appointment, and failed to respond to subsequent contact attempts (B.R. 06 – 887(2)(6) Phone Statement).

and \$87(2)(b) and \$87(2)(b) all alleged that several others – approximately 4 males, according to \$87(2)(b) — were stopped and possibly frisked along with them. None could provide names or contact information for other victims or witnesses. \$87(2)(b) — only knew the three of the males by their first names or nicknames – \$87(2)(b) — and \$87(2)(b) — but had no contact information for them (B.R. 08, 09 – \$87(2)(b) — Statements). \$87(2)(b) — s was the only name documented in the UF-250s. (B.R. 28 – UF-250 Reports)

Findings and Recommendations

Subject Officer Identification

described six officers at the scene: two in uniform (a black female, identified by the investigation as PO Dornezia Agard, and an Indian male, identified by the investigation as PO Suresh Rupram); and four males in plainclothes. stated that only the plainclothes officers conducted frisks, and described them as follows: a heavy-set Hispanic male officer he referred to a "Sgt. Nunez," shield number 3505 (name and shield were obtained during the stop and at the stationhouse); a muscular light-complexioned Hispanic male; a medium-built black male wearing "fly," expensive-looking sneakers; and a thin black male wearing a Yankee cap.

alleged: that he was frisked by the muscular Hispanic male; that **\frac{87(2)(0)}{27(2)(0)}\$ was frisked and instructed to remove his cash by Sgt. Nunez, the same officer who later pushed him at the stationhouse; and that in addition to conducting frisks, the officer with the sneakers – after running cell phone checks on ID cards he obtained – then searched a parked vehicle belonging to one of the males. (B.R. 08 – **\frac{87(2)(0)}{27(2)(0)}\$ Statement)

Sgt. Nunez is a light-complexioned Hispanic male, 6'1" tall, 250 pounds. PO Allen is a dark-complexioned black male, 5'8" tall, 190 pounds. PO Baez is a light-complexioned Hispanic male, Page 3

Sanchez is a medium-complexioned Hispanic male, 6'1" tall, 280 lbs.

Sgt. Nunez, PO Allen, and PO Baez acknowledged responding to the scene first and frisking at least one male, but could not describe who they interacted with in any way: Sgt. Nunez stated he frisked exactly one male; PO Baez stated that he frisked two males; and PO Allen stated that he frisked at least one male. The officers did not recognize stated by name or photograph. None

of the officers acknowledged frisking \$87(2)(b) who they all saw later at the stationhouse.

5'10" tall, 210 pounds. PO Jean is a dark-complexioned black male, 5'9" tall, 190 pounds. PO

Sgt. Nunez stated that PO Sanchez and PO Jean were involved in conducting frisks, but could not describe who or how many individuals they frisked. PO Sanchez and PO Jean stated that they arrived at the scene after the males had been frisked, and did not do so themselves. PO Sanchez acknowledged that he was wearing high-end sneakers which received compliments from the stopped males. All five officers denied searching a vehicle. (B.R. 11 – 17, Officer Statements)

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Allegation A – Abuse: Outside 2021 Bergen Street, Sergeant Oscar Nunez stopped [587(2)(6)]

Allegation B – Abuse: Outside 2021 Bergen Street, Sergeant Oscar Nunez stopped \$87(2)(6)

Allegation C – Abuse: Outside 2021 Bergen Street, Sergeant Oscar Nunez stopped \$27(2)(5)

Allegation D – Abuse: Outside 2021 Bergen Street, Sergeant Oscar Nunez stopped individuals.

The following facts are undisputed. On May 11, 2016, at approximately 9: 37 pm, Sgt. Nunez, PO Baez and PO Allen were the first officers to respond to a reported firearm at Bergen Street and Boyland Street, where they stopped five black males standing beside a vehicle parked curbside. The report was called in to 911 by an anonymous tipster at 9:32 pm.

The investigation obtained the audio recording of the initiating 911 call. The anonymous tipster — who identifies himself as '\$87(2)(b) but refuses to provide a last name —first states the following to the operator:

"I just seen some youths brandishing some guns - on [Bergen and Boyland Streets] - there's like 5 of them on a car - one with a white shirt - he got a gun in a... waist... I was a little bit scared when I seen 'em flashing the gun in his waist... I thought he was gonna try to shoot at us." (B.R. 27 – 911 Audio Transcription)

Upon further questioning, the tipster describes this individual as a black male wearing a white t-shirt, and clarifies that this male drew exactly one firearm from the left-side of his waistband. The tipster again states that all five males are standing around a vehicle. No further information is asked for or provided, about the five males generally, the suspect male specifically, or the mentioned vehicle. The 911 call was 2 minutes and 20 seconds in duration. (B.R. 27 – 911 Audio Transcription; B.R. 26 – Event Documents; B.R. 24 – 911 Audio)

The investigation obtained the audio recording of police radio communications regarding the incident, which logged the dispatcher's subsequent transmission: "there's a male black, he has a firearm on the left side of his waistband...there's five males at the location..." The dispatcher relays that the suspect was described as wearing a white t-shirt, and notes twice that the caller was anonymous. (B.R. 27 - 911 Audio Transcription; B.R. 25 - Police Radio Communications)

stated he and approximately 6 other males from the neighborhood – all of whom live nearby – were hanging out casually on Bergen Street, near the intersection with Boyland Street.

was wearing a dark hoodie. He did not recall what others wore, or whether anyone had on a white t-shirt. Prior to the police response, the men had been standing around a parked vehicle (a blue Honda Sonata belonging to 'stated that officers suddenly arrived in several vehicles from multiple directions, without their lights or sirens engaged. Four to five plainclothes officers, and two uniformed officers surrounded the men – all of whom had stayed by the vehicle – and advised that they were responding to a reported firearm. Although the men denied carrying a gun, the plainclothes officers ultimately frisked them, obtained their

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identification, and searched the parked vehicle. **SET(2)(b)** believed that the officers had them stopped for approximately 20 minutes to 30 minutes. (B.R. 08, 09 – **SET(2)(b)** Statements)

Sgt. Nunez acknowledged that he was aware, en route to the location, that the report was made by an anonymous caller. Sgt. Nunez believed that the dispatcher provided a description of the armed suspect (male black), including clothing information, but did not recall exactly what this description was. Sgt. Nunez did not recall if any contemporaneous information was provided about the suspect's actions, the surrounding scene, the firearm itself, or the manner of display – (brandished or concealed). Sgt. Nunez stated that the dispatcher said nothing about vehicles at the location. (B.R. 13, B.R. 18 – Sgt. Nunez Statement, Memo Book)

Regarding the stop, Sgt. Nunez described the following sequence of events: he, PO Allen, and PO Baez approached the reported intersection without lights and sirens, and without any prior surveillance efforts or tactical plans; when they turned left onto Bergen Street, heading against traffic, they noticed five black males standing on the sidewalk, all of whom immediately began walking away in different directions; with no time for communication between themselves, the officers exited and each individually engaged the males, instructing them to come back. In doing so, Sgt. Nunez did not know where PO Baez and PO Allen went, or who they engaged, due to his focus on one particular male who appeared to match the description relayed. Sgt. Nunez did not recall what this male looked like, and could not articulate any aspects of resemblance (beyond believing there was a clothing color match). While walking away from Sgt. Nunez, at a distance of approximately 15 feet, this male appeared to be moving towards a vehicle parked curbside (Sgt. Nunez was unclear about the spatial and physical dynamics of the males' motions). As Sgt. Nunez approached the male, he instructed him to come back and asked him where he was going. The male stopped but was evasive in his answers. As Sgt. Nunez neared him, the male took on a bladed stance, angling his body away from him. Upon reaching him, Sgt. Nunez frisked the male, and guided him back to the police vehicle, where he found the other four males with PO Baez and PO Allen. Sgt. Nunez believed that the other four males had returned compliantly, and that his male had been the only one to act so suspiciously. At their initial dispersal, Sgt. Nunez did not see any of the males discard any objects or make any furtive hand movements – they only appeared to glance back at the police vehicle as they walked away. Sgt. Nunez stated that after explaining why they had been stopped, the officers (PO Sanchez and PO Jean had since arrived) ultimately left after approximately 15 minutes on the scene. (B.R. 13 – Sgt. Nunez Statement)

PO Baez also stated that the five males, who were initially leaned against a parked vehicle, all began walking to the opposite side of the street as the officers turned onto Bergen Street. While they looked nervous, and appeared to be checking their pockets, PO Baez did not see anyone attempt to discard any objects. PO Baez stated that the officers exited and instructed the males to return. When they did not comply initially, they officers approached them and guided them back to their earlier position by the parked vehicle (PO Baez used the term "shepherded"). PO Baez corroborated that one of the males, engaged directly by Sgt. Nunez, had made it farther from the other four: this male was less compliant in returning, and, when brought back by Sgt. Nunez, kept his body bladed at an angle, in in a threatening and furtive manner. Once at the parked vehicle, the males were instructed to stand with their hands by their sides and then frisked. (B.R. 14, B.R. 20 – PO Baez Statement, Memo Book)

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PO Allen recalled no specific details regarding how the five males were stopped (B.R. 16 – PO Allen Statement) PO Sanchez and PO Jean stated that they arrived after the males had already been frisked. (B.R. 15 – PO Sanchez's Statement; PO 17 – PO Jean's Statement)

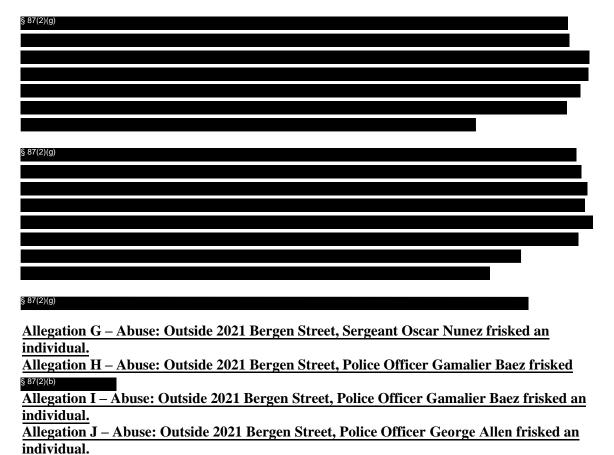
While Sgt. Nunez, PO Baez, and PO Allen all denied or did not recall if identification cards were obtained, or if names were checked for warrants, PO Sanchez stated that he observed PO Allen holding a stack of ID cards, running name checks on his cell phone. (B.R. 15 – PO Sanchez's Statement)

PO Agard stated that when she and PO Rupram arrived as the second unit on scene, PO Baez and PO Allen were already there, exiting their vehicle and approaching four males leaned against a parked vehicle. The officers briefly engaged the males as Sgt. Nunez arrived in another vehicle. PO Baez and PO Allen then frisked all four males, as Sgt. Nunez stood by. (B.R. 11 – PO Agard's Statement)

New York courts, aligning with federal rulings on the matter, have ruled that an anonymously reported tip cannot provide reasonable suspicion for a stop absent additional corroborating factors: the tip must relay some future-oriented, predictive information suggestive of criminal behavior, or some similar information allowing for the tip to be tested for reliability. (B.R. 31 – People v. Moore, 6 N.Y.3d 496, citing Florida v J. L., 529 U.S. 266) Even in the event of alleged gun-running, and even if the tip is descriptively specific to a determinate individual, "the police must obtain additional information or make additional observations of suspicious conduct sufficient to provide reasonable suspicion of criminal behavior." (B.R. 31 – People v. Moore) An anonymous tip, absent these enumerated factors, only triggers officers' common-law right of inquiry. (B.R. 31 – People v. Moore)

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Allegation K – Abuse: Outside 2021 Bergen Street, Police Officer Marlon Sanchez frisked an individual.

Allegation L – Abuse: Outside 2021 Bergen Street, Police Officer Gesly Jean frisked an individual.

As discussed earlier, the following facts are undisputed. Sgt. Nunez frisked exactly one individual, PO Baez two individuals, and PO Allen at least one individual. None had any idea who they frisked.

stated that he was frisked by a muscular Hispanic male. \$87(2)(b) also stated that Sgt. Nunez, and the two black males – one wearing "fly," expensive sneakers – were involved in patting down others. (B.R. 08 – \$87(2)(b) Statement)

Sgt. Nunez stated that he frisked the bladed male immediately after reaching him, by patting his waistband and pockets down (B.R. 13 – Sgt. Nunez Statement). PO Baez stated that he frisked two of the males in a similar manner, when they were returned to the parked vehicle (B.R. 14 – PO Baez Statement). PO Allen did not recall the manner in which he performed his pat-down, and did not recall how many of the males he frisked. (B.R. 16 – PO Allen Statement) Sgt. Nunez and PO Baez both acknowledged that they observed no suspicious bulges under the males'

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clothing, prior to frisking them.

Sgt. Nunez stated that PO Sanchez and PO Jean, who arrived after he did, also conducted frisks, but could not provide further specifics. PO Sanchez and PO Jean denied frisking anyone, stating that they arrived on scene after the males had been frisked. (B.R. 15 – PO Sanchez's Statement; PO 17 – PO Jean's Statement) PO Sanchez and PO Jean both stated that they were joking around with the males, and described the stop as almost casual. PO Sanchez noted that some of the males complimented his high-end sneakers. All of the officers stated that the males were all nonconfrontational and compliant for the frisk and the remainder of the stop.

"A corollary of the statutory right to temporarily detain...is the authority to frisk if the officer reasonably suspects that he is in danger of physical injury by virtue of the detainee being armed." (B.R. 32 – People v. De Bour/ La Pene, 40 N.Y.2d 210) "An officer's conduct must be justified at its inception and reasonably related in scope and intensity to the circumstances of the encounter as it developed." (B.R. 32 – People v. De Bour/La Pene)

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| Allegation E – Abuse: Outside 2021 Bergen Street, Sergeant Oscar Nunez frisked §87(2)(b) |
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| Allegation F – Abuse: Outside 2021 Bergen Street, Sergeant Oscar Nunez searched 887(2)(5) |
| Allegation N – Abuse: At the 73rd Precinct Stationhouse, Sergeant Oscar Nunez used |
| physical force against § 87(2)(b) |
| |
| stated that he observed \$87(2)(b) being patted down by Sgt. Nunez, and asked to |
| remove a stack of cash he had bundled in his pocket. However, ser(2)(5) also stated that he did not have a clear line of sight on this interaction: ser(2)(5) was positioned behind ser(2)(5) |
| towards the rear of the vehicle; when \$\frac{\\$37(2)(0)}{\}\$ turned back towards \$\frac{\\$37(2)(0)}{\}\$ officers |
| instructed him to stand still and face the other way. After \$87(2)(b) realized that his money |
| was missing, §87(2)(b) and several others went to the 73rd precinct station |
| house to file a complaint. There, §87(2)(b) stated that he observed the following, while standing |
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in the vestibule leading into the station house: As §87(2)(b) was filing his report by the front desk, Sgt. Nunez entered the station house and approached § 87(2)(b) appearing to question him about the complaint; when \$87(2)(b) stated "you took my money," Sgt. Nunez replied "I didn't take your money," and pushed him once on the chest. Sgt. Nunez, who stated he happened to be at the stationhouse on administrative matters, acknowledged interacting with \$87(2)(6) but denied getting into a verbal or physical dispute with him at any point, and denied pushing him. Sgt. Nunez noted the following regarding s allegation: he first stated that two other officers had removed a \$200 bill from his pocket; when he questioned him about the nature of this \$200 note, \$87(2)(b) became irate and changed his story, and then alleged that it was Sgt Nunez who had taken his money. Sgt Nunez ultimately left \$87(2)(b) to notify IAB, and later found that he was gone. Sgt Nunez had no recollection of \$87(2)(b) at the scene of the stop, and did not recall engaging with him. Sgt. Danielle Donoghue, the Desk Sergeant on duty, did not recall anything resembling the above-referenced events. (B.R. 11 – Sgt. Donogue Statement) PO Baez, PO Allen, PO Sanchez, and PO Jean all denied searching the males' pockets, or instructing them to empty contents from their pockets. PO Agard corroborated that none of the males were searched. All of the officers stated that they happened to return to the stationhouse at different intervals, at which time they saw §87(2)(b) and several of the stopped males there, creating a loud disturbance about missing money. The officers all stated that Sgt. Nunez assisted with his complaint, and all denied seeing Sgt. Nunez push or otherwise physically engage § 87(2)(6) at the stationhouse. (B.R. 11 - 17, Officer Statements) A month after his CCRB interview, \$87(2)(6) provided the investigation with a brief cell phone recording of the stationhouse incident, but was never available to comment on the scene depicted. The 19 second recording (embedded below), which frames the station house vestibule, only shows a loud, chaotic, and ultimately indecipherable scene featuring several unidentified civilians and officers; the video shows none of the subject officers, or any physical interactions between officers and civilians. (B.R. 29 – Stationhouse Video) 2016-08-29 8-11-02,mp4

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| searched the vehicle a Statement) | gainst which the me | a vehicle was searched. | |
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| 87(2)(g) 87(2)(g) | officers denied that | a vehicle was searched. | |
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CCRB Case # 201604051

§ 87(2)(g)